

## **PROGRESS REPORT NO. 11**

# **MICHIGAN COURT OF APPEALS DELAY REDUCTION PLAN**

March 23, 2005

### **Work Group Members:**

Judge Hilda R. Gage  
Chief Judge Pro Tem Michael R. Smolenski  
Chief Judge William C. Whitbeck, Chair  
Judge Brian K. Zahra  
Kim Hauser  
Mary Lu Hickner  
Sandra Mengel  
Larry Royster

### **Contributing Judges:**

Judge Richard A. Bandstra  
Judge Jessica R. Cooper  
Judge Richard A. Griffin  
Judge Kirsten Frank Kelly  
Judge Patrick M. Meter  
Judge Michael J. Talbot  
Judge Helene N. White

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## I. EXECUTIVE SUMMARY

In March of 2002 the Michigan Court of Appeals adopted a long-range goal of disposing of all appeals filed with it within 18 months of filing, commencing with those cases filed on and after October 1, 2003. Since the Preliminary Report that signaled the inception of the Court's delay reduction plan, we have issued ten Progress Reports. This Progress Report No. 11 that sets out data covering 2004. The public can access the Preliminary Report and each of the eleven progress reports on the Court's web site at <http://courtofappeals.mijud.net/resources/drwg.htm>.

To meet the Court's long-range goal of disposing of all appeals within 18 months of filing, the Court adopted two objectives:

- *First*, the Court determined that it would need to reduce the time to process an opinion case from its 2001 level of 653 days to approximately 497 days. The Court designed a number of actions, which took effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003, to meet this first objective.
- *Second*, the Court determined that it would then need to further reduce the time it takes to process an opinion case to approximately 300 days, commencing October 1, 2003. This, in essence, means that the Court must substantially reduce or eliminate the component in processing time that it calls the "Warehouse."

As this Progress Reports shows it took 159 fewer days to move an opinion case through the Court than it did in the base year of 2001. Thus, the Court has accelerated the progress toward delay reduction that it achieved in 2002 and 2003. Indeed, the Court has reduced the time it takes to process an opinion case by over 25%.

In the Court's presentation of its budget proposals for FY 2004 (the fiscal year commencing October 1, 2003), the Court concentrated on the Warehouse stage of its processing and made the point that with modest increases in the staff in its Research Division, it could eliminate or substantially reduce the time that a case gathers dust in the Warehouse. The Court was therefore extremely pleased that as part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court received approximately \$525,000 more in revenues in FY 2004 than it received in FY 2003. These funds have allowed the Court to increase its Research Division staff and complete the important work of drastically reducing or eliminating the Warehouse.

Indeed, that process is already well underway and the results to date have been extraordinarily positive. As noted above, for opinion cases decided in 2004, there has been another significant decrease in overall average processing times:

### **Comparative Overall Processing Times**

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
653 Days	603 Days	554 Days	494Days

Thus, the average time to process an opinion case, from filing to decision, through the Court has decreased by 159 days when comparing the base year of 2001 to 2004. As the Court

expected, a significant portion of the these time savings—104 of the 159 days—has been achieved in the Warehouse stage:

**Comparative Overall Processing Times/Warehouse**

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
271 Days	261 Days	225 Days	<i>167 Days</i>

On October 5, 2004, the Supreme Court approved a plan developed by a joint bench/bar Case Management Work Group for management of civil cases at the Court that will cut approximately 70 days from the average time it takes to process an opinion case in its first year of operation. Pursuant to the Supreme Court's Administrative Order, the Court of Appeals commenced implementation of the plan on January 1, 2005.

The Court's core mission is to resolve the cases pending before it with due deliberation *and* due speed. The Court's delay reduction plan will, as it implements the final elements over the coming months, ensure due speed through the significant reduction of delay on appeal.

## II OVERVIEW

### A. Statement of the Problem

In 2001, the Court disposed of approximately 7,600 cases. Of these, the Court disposed of 3,100 cases by opinion and the rest by order. On average, the Court disposed of these opinion cases in 653 days from the date of filing. The Judges of the Court unanimously determined that this time frame was not within acceptable limits and therefore adopted a comprehensive delay reduction plan on March 8, 2002. The Court has subsequently issued ten progress reports detailing its progress on this plan. This eleventh progress report covers the calendar year 2004 with particular emphasis on the fourth quarter of that year. All of the reports are available on the Court's website at: <http://courtofappeals.mijud.net/resources/drwg.htm>.

### B. Goals and Objectives

#### 1. *Long-Range Goal*

The Court's delay reduction plan involves an overall long-range goal and two shorter-term objectives designed to meet that goal. The long-range goal is to dispose of 95% of all the Court's cases within 18 months of filing, commencing with those cases filed on or after October 1, 2003.

#### 2. *First Short-Term Objective*

To achieve its long-range goal, the Court determined that it must first reduce the average time it takes to process an opinion case through the Court from its 2001 level of 653 days to approximately 497 days. To achieve this reduction, the Court has taken a three-pronged approach: *First*, the Court set very aggressive targets for disposing of cases once they reach the Judicial Chambers. *Second*, the Court, through a number of mechanisms, set equally aggressive targets for moving cases more quickly out of the Warehouse, primarily by moving these cases directly into the Judicial Chambers at a considerably accelerated pace. *Third*, the Court proposed a number of changes in the Court Rules to shorten the time in Intake. The Court designed these actions to take effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003.

#### 3. *Second Short-Term Objective*

Reducing the overall average processing time for opinion cases from its 2001 level of 653 days to approximately 497 days will not, however, permit the Court to meet its long-range goal of disposing of 95% of all cases within 18 months of filing. To achieve this long-range goal, the Court must reduce its overall average processing time for opinion cases to approximately 300 days. To achieve that reduction, the Court must eliminate or substantially reduce the time that opinion cases wait in Warehouse. That is the Court's second objective.

## II. RESULTS IN 2004 AS COMPARED TO FIRST OBJECTIVE

### A. Processing Times of Opinion Cases

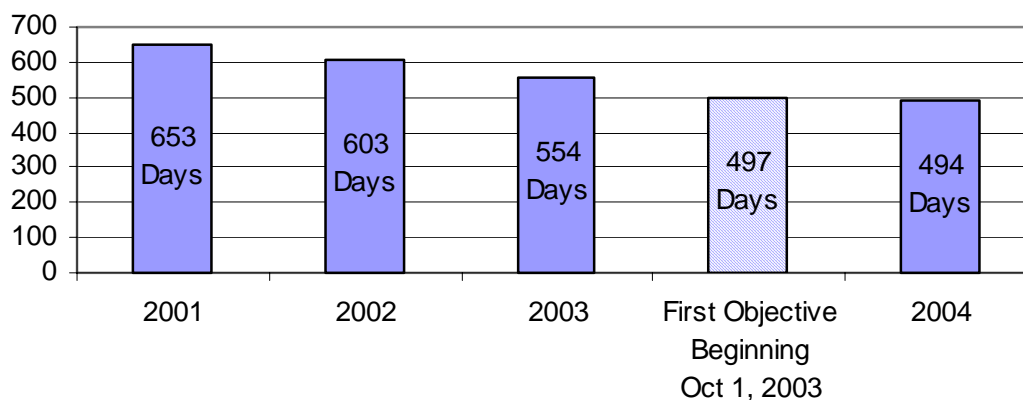
#### 1. *Overall*

As Chart 1 shows, in 2001 the Court took 653 days on average to dispose of an opinion case. In 2002 this time was 603 days and in 2003 it was 554 days. In 2004 this time was 494 days. Graph 1 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 1 shows, the Court has exceeded its first objective.

**Chart 1**

	2001	2002	2003	2004
<b>Intake</b>	260	240	235	228
<b>Warehouse</b>	271	261	225	167
<b>Research</b>	61	62	64	68
<b>Judicial Chambers</b>	61	40	30	31
<b>Totals</b>	653	603	554	494

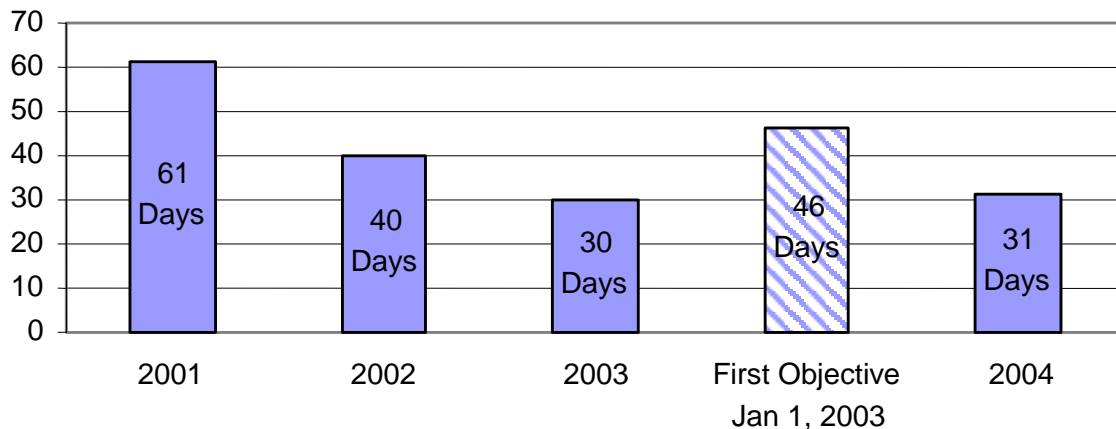
**Graph 1**  
**Overall Time In Processing Compared To First Objective**



## 2. *Judicial Chambers*

Graph 2 shows that in 2001 for those cases disposed of by opinion the average time spent in the Judicial Chambers was 61 days. In 2002 this time was 40 days and in 2003 it was 30 days. In 2004 this time was 31 days. As Graph 2 shows, the Court has more than met its first objective.

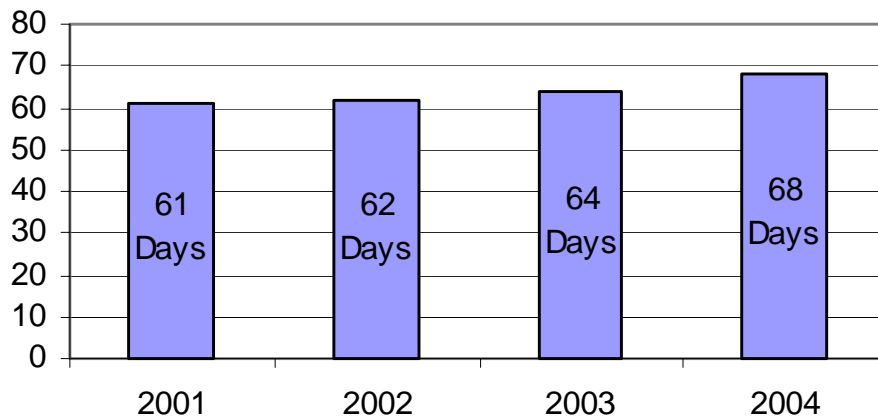
**Graph 2**  
**Processing Time In Judicial Chambers Compared To First Objective**



## 3. *Research*

As Graph 3 shows, in 2001 for those cases disposed of by opinion the average time spent in the Research Division was 61 days. In 2002 this time was 62 days and in 2003 it was 64 days. In 2004 this time was 68 days. Graph 3 shows these times on a comparative basis.

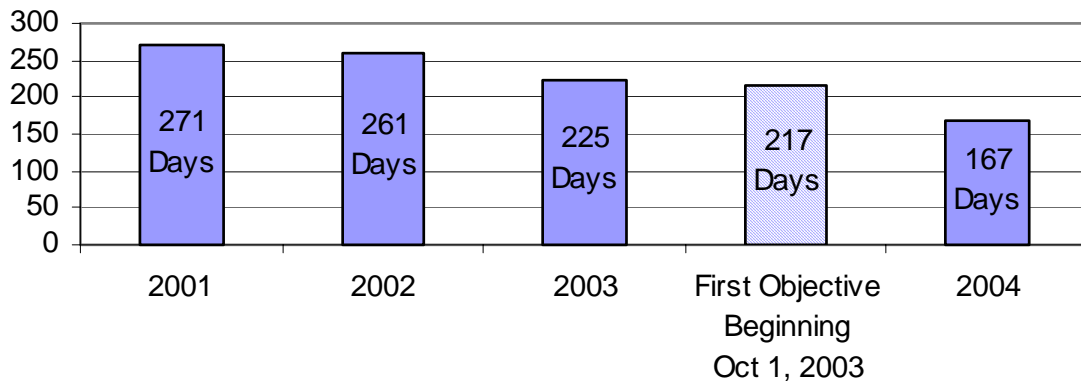
**Graph 3**  
**Processing Time In Research**



#### 4. Warehouse

Graph 4 shows that in 2001 for those cases disposed of by opinion the average time spent in the Warehouse was 271 days. In 2002 this time was 261 days and in 2003 it was 225 days. In 2004 this time was 167 days. Graph 4 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 4 shows, the Court has exceeded its first objective.

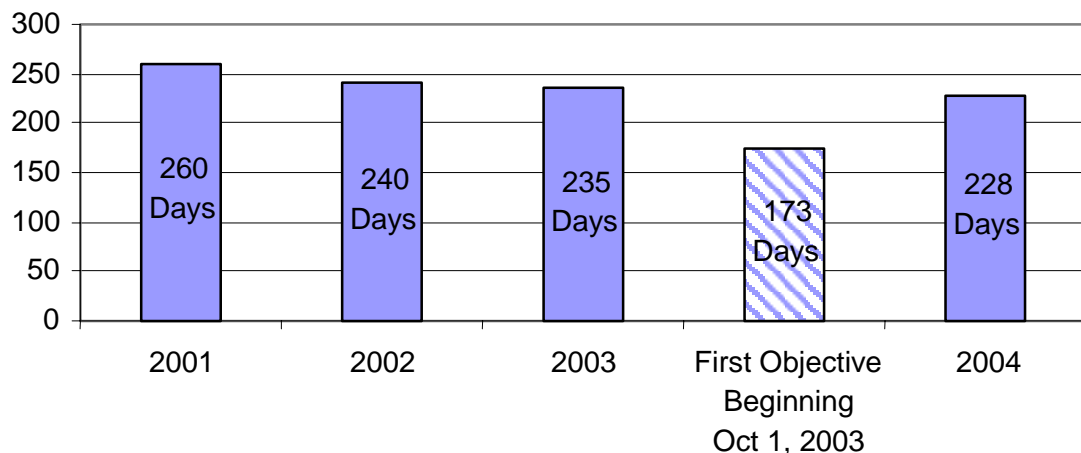
**Graph 4**  
**Processing Time In The Warehouse Compared To First Objective**



#### 5. Intake

Graph 5 shows that in 2001 for those cases disposed of by opinion the average time spent in Intake was 260 days. In 2002 this time was 240 days and in 2003 it was 235 days. In 2004 this time was 228 days. Graph 5 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 5 shows, the Court has not yet met its objective.

**Graph 5**  
**Processing Time In Intake Compared To First Objective**



## **B. Case Differentiation**

Chart 2 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2001, arrayed according to major case types.

**Chart 2**  
**2001**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non-Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	260	271	229	280	192	187
<b>Warehouse</b>	271	290	214	331	60	56
<b>Research</b>	61	61	62	63	56	52
<b>Judicial Chambers</b>	61	72	27	66	43	30
<b>Total</b>	653	694	532	740	351	325

Chart 3 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2002, arrayed according to major case types.

**Chart 3**  
**2002**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non-Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	240	254	205	255	178	178
<b>Warehouse</b>	261	290	189	312	58	56
<b>Research</b>	62	59	69	61	66	67
<b>Judicial Chambers</b>	40	49	19	44	26	20
<b>Total</b>	603	652	482	672	328	321



Chart 4 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2003, arrayed according to major case types.

**Chart 4**  
**2003**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non-Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	235	244	212	251	166	167
<b>Warehouse</b>	225	253	154	271	28	27
<b>Research</b>	64	63	64	63	66	67
<b>Judicial Chambers</b>	30	36	16	33	18	14
<b>Total</b>	554	596	446	618	278	275

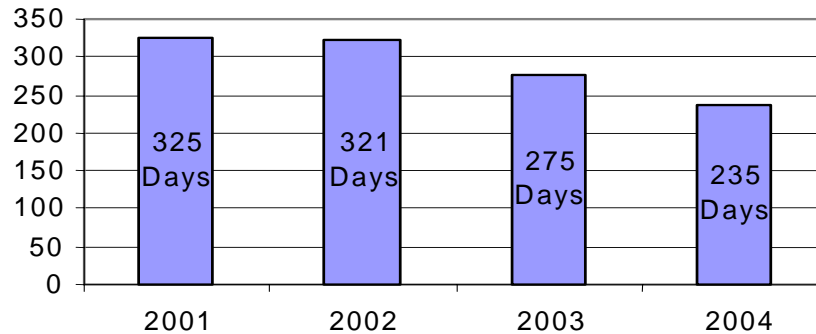
Chart 5 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2004, arrayed according to major case types.

**Chart 5**  
**2004**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non-Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	228	241	201	249	134	131
<b>Warehouse</b>	167	175	150	198	29	28
<b>Research</b>	68	73	59	71	55	55
<b>Judicial Chambers</b>	31	34	25	33	22	21
<b>Total</b>	494	523	435	551	240	235

The Court has also focused special attention on dependency appeals. These appeals arise from trial court orders terminating parental rights (TPR) and deciding custody issues involving minor children in domestic relations cases. In 2001 it took 325 days, on average, to dispose of such cases by opinion. As Chart 5, above, shows, the Court reduced this time to 235 days in 2004. Of that time, 131 days was spent in the Intake stage. The combined time for all other stages was 104 days, including only 21 days in the Judicial Chambers. Graph 6 shows the situation with respect to dependency appeals beginning in 2001 through 2004.

**Graph 6**  
**Dependency Appeals**



The Dependency Appeals Work Group, which is comprised of judges and staff from trial courts, the Court of Appeals and the Supreme Court, published its final report in May 2003. See [http://courtofappeals.mjud.net/pdf/Dependency\\_Appeals\\_Final\\_Report\\_May\\_2003.pdf](http://courtofappeals.mjud.net/pdf/Dependency_Appeals_Final_Report_May_2003.pdf). The Court of Appeals submitted proposed rule amendments to the Supreme Court that it adopted on February 3, 2004. These rule amendments focus on appeals from TPR orders and address delay that occurs *after* entry of such orders and *through* final disposition of an appeal to this Court. The goal is to reduce the disposition time to a total of seven months (210 days). The recommendations of the Work Group will result in an average time of 196 days from the date of the order terminating parental rights through disposition by the Court of Appeals. And only 167 days of that period (highlighted below) will occur at the Court of Appeals:

**Days**

Order of TPR	0	Day zero on timeline
Request for counsel	14	Current rule: MCR 3.977(I)(1)(c)
Form appoints counsel, orders transcripts, is claim of appeal	14	Current rule: MCR 3.977(I)(2)(a) and (b)
Receive claim of appeal	0	Receipt of claim occurs while transcripts are prepared
File transcripts	42	Due 42 days after ordered per MCR 7.210(B)(3)(b)(iii)
File AT brief	28	Current rule. MCR 7.212(A)(1)(a)(i)
File AE brief	21	Current rule. MCR 7.212(A)(2)(a)(i)
File record	14	Proposed amendment of MCR 7.210(G). ADM No. 2002-34
Send to research	7	Current policy
Complete report	28	Current policy
Submit on call	14	Policy approved in August 2003
Issue opinion	14	Average time at COA from January through June 2003
Total days	196	

In the fourth quarter of 2003, the Court hired additional contract attorneys with the delay reduction funding that the Legislature appropriated for FY 2004, so that dependency appeals can now receive research reports and be placed on call with virtually no delay. Further reductions in delay will occur if the Supreme Court adopts the proposed amendment of MCR 7.210(G), which shortens the time for forwarding the lower court record to this Court from 21 days to 14 days.

This proposal remains under consideration by the Supreme Court as part of Proposed Amendment File No. 2002-34 that was taken under advisement in Administrative Order No. 2003-6 dated November 4, 2003. And, although it will not affect the disposition time in this Court because it precedes the filing of the appeal, the amendment of MCR 3.977(I) will reduce the time it takes to file the appeal by establishing an automatic claim of appeal that also constitutes the order of appointment of counsel and the order for transcript production. It is estimated that this will save 21 days between the time of the termination order and the filing of the appeal. The net effect of these changes will be a reduction of time on appeal in TPR cases from the present average of 235 days to the projected average of 167 days.

It should be noted that the number of TPR cases filed with the Court has been increasing following the “spike” coincident with the effective date of the “Binsfield legislation,” as Chart 6 shows:

**Chart 6**  
**TPR Cases Filed**

<u>Year</u>	<u>Number of Cases</u>
1994	265
1995	281
1996	354
1997	423
1998	459
1999	616 (Coincident with Binsfield legislation)
2000	508
2001	528
2002	574
2003	541
2004	565

As is apparent following the spike resulting from the Binsfield legislation the number of new TPR cases filed with the Court declined, but the decline never reached the pre-Binsfield level. Thereafter, with some fluctuation, the number of new TPR cases has increased. As noted above, the Court has hired additional contract attorneys to deal with dependency appeals. With the continued increase in new TPR filings, this is a program that should be expanded.

### **C. Case Age**

As noted above, the Court decides a mix of cases, some by opinion and some by order. The Court’s overall goal is to decide 95% of its cases within 18 months of filing (see table, below). While the Court is gratified at the increasing percentage of cases in its inventory that are 18 months old or less at disposition, the Court still must make considerable progress if it is to meet its long-term goal of deciding 95% of all its cases within 18 months of filing.

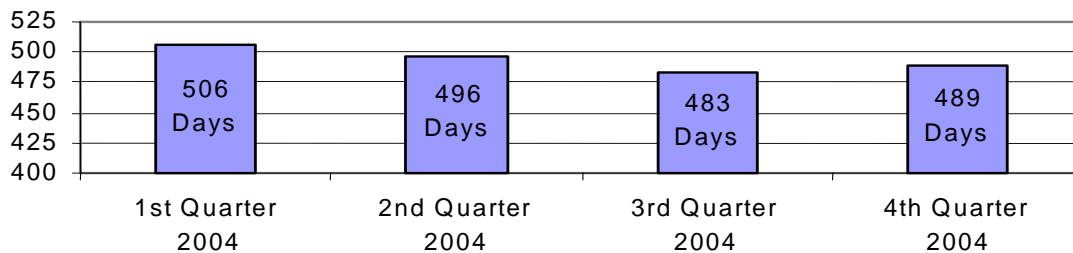
### Percentage of Cases 18 Months Old Or Less At Disposition

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Opinion Cases	25.03%	33.31%	46.59%	67.01%
Order Cases	x <sup>1</sup>	97.36%	97.70%	98.30%
All Cases	y <sup>1</sup>	66.92%	74.43%	83.85%

#### **D. Fourth Quarter, 2004**

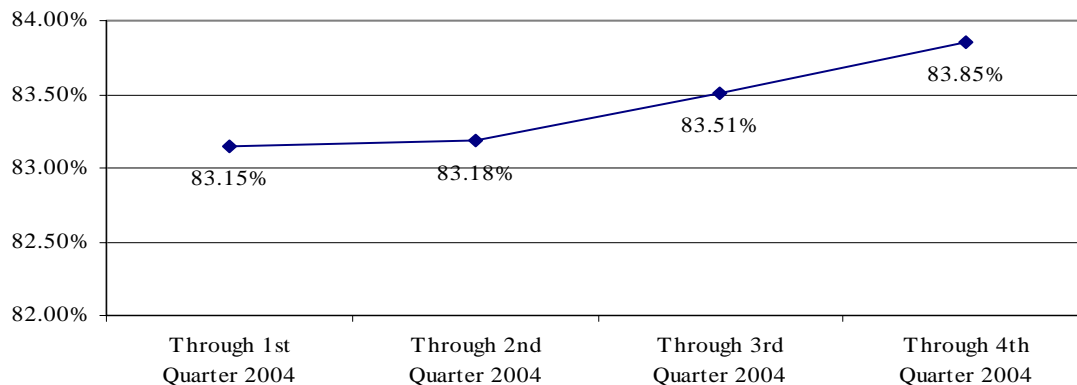
The results for the fourth quarter of 2004 are less encouraging than the results for the full calendar year. In essence, the Court's delay reduction effort reached a plateau during the fourth quarter as Graph 7 shows.

**Graph 7**  
**Overall Time In Processing**  
**Quarter-to-Quarter Comparison, 2004**



But looked at another way, the Court made progress throughout 2004, including the fourth quarter, toward meeting its goal of deciding 95% of all of its cases within 18 months of filing as Graph 8 shows:

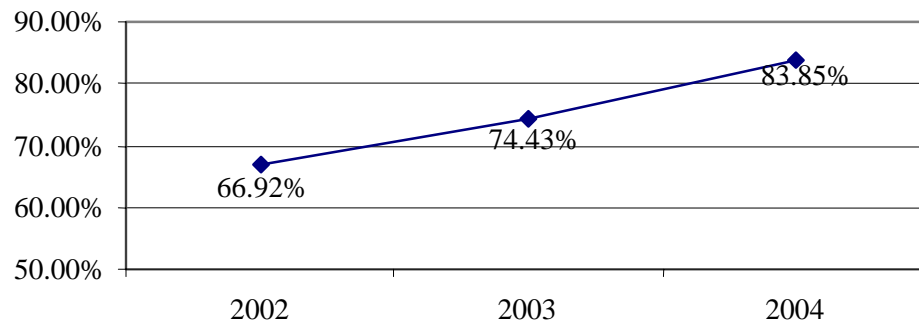
**Graph 8**  
**Percentage Of Cases 18 Months Old Or Less At Disposition**  
**2004**



<sup>1</sup> These data are not readily available from the Court's database.

This level of disposition is significant in comparison to the disposition levels in prior years, as Graph 9 shows:

**Graph 9**  
**Percentage Of Cases 18 Months Old Or Less At Disposition**  
**2002, 2003, 2004**



It is very clear, however, that the Court must continue to increase the percentage of dispositions in 18 months or less at roughly the same rate over the coming year in order to reach its goal of deciding 95% of all its cases within 18 months of filing by the end of 2005. This will be a significant challenge for the Court as a whole.

## **IV. NEXT STEPS**

### **A. Increasing the Staff in the Research Division**

The Court recognized in March of 2002 that, given existing budget constraints, it was not realistic to expect that it could add new attorneys to its Research Division in either FY 2002 or FY 2003. Indeed, the Court actually experienced significant budget *reductions* during both of these fiscal years. Nevertheless, to meet its overall goal of disposing of 95% of all appeals within 18 months of filing, the Court must further reduce the time it takes to process an opinion case to approximately 300 days. In the presentation of its budget request for FY 2004, the Court emphasized that, in order to meet this goal, it must add attorneys to its Research Division and thereby drastically reduce or eliminate the Warehouse.

Fortunately, there was almost universal recognition of this urgent need. As part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court received approximately \$525,000 more in revenues in FY 2004 from entry and motion fees than it received in FY 2003. These funds have allowed the Court to increase its Research Division staff.

### **B. Reducing the Time in Intake**

The Court must also address the problem of the delay in Intake. As noted above, in 2001 an opinion case spent 260 days on average in Intake. In 2002 that time was 240 days on average, in 2003 it was 235 days on average, and in 2004 it was 228 days on average. The Court initially proposed to reduce the time a case spends in Intake to 173 days on average for those cases filed on or after October 1, 2003. The Court expected to meet that objective through adoption of the various changes to the court rules. These proposed changes remain under consideration by the Michigan Supreme Court. Pending a decision on those changes, a Case Management Work Group comprised of members from the Supreme Court, the Court of Appeals, and the Bar developed a plan for the management of appeals from summary disposition orders. It is estimated that the plan will cut approximately 70 days from the average time it takes to process all opinion cases in its first year of operation. On October 5, 2004, the Supreme Court approved that plan in Administrative Order No. 2004-5. Pursuant to the administrative order, the Court of Appeals began implementation of the plan on January 1, 2005.

## V. CONCLUSIONS

On March 8, 2002, the Judges of the Court of Appeals adopted the ambitious goal of disposing of 95% of all appeals filed with the Court within 18 months of filing. The Court's delay reduction plan, with the exception of changes to the court rules that will reduce the time a case spends in Intake, commenced on an overall basis in July of 2002. In 2004:

- The Court reduced the average overall time it takes to dispose of an opinion case from the 2001 level of 653 days to 494 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 497 days commencing fully on October 1, 2003. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case spends in the Judicial Chambers from the 2001 level of 61 days to 31 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 46 days in the Judicial Chambers. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case waits in the Warehouse from the 2001 level of 271 days to 167 days. The Court's objective was to reduce the wait in the Warehouse to 217 days by October 1, 2003. The Court therefore has exceeded its first objective.
- The average time a case spends in Intake has been reduced from the 2001 level of 260 days to 228 days. The Court's objective was to reduce the time in Intake to 173 days commencing with the cases filed on or after October 1, 2003. Thus, the Court will need to reduce the time a case spends in Intake by another 55 days to meet its objective.
- The Court has reduced the average overall time it takes to process dependency appeals from the 2001 level of 325 days to 235 days. The recently adopted rule changes (and the ultimate adoption of the remaining proposal for changing MCR 7.210 as to the time for filing the record with the Court) will further reduce the time on appeal of TPR cases to a projected average of 167 days.

Chart 7 summarizes the Court's progress toward meeting its first objective.

**Chart 7**  
**October 2003 Objective**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Improvement To Date</b>	<b>First Objective</b>	<b>Improvement Needed To Meet First Objective</b>
<b>Intake</b>	260	240	235	228	32	173	55
<b>Warehouse</b>	271	261	225	167	104	217	(50)
<b>Research</b>	61	62	64	68	(7)	61	7
<b>Judicial Chambers</b>	61	40	30	31	30	46	(15)
<b>Total</b>	653	603	554	494	159	497	(3)

Chart 8 summarizes the additional progress that will be needed to meet the Court's second objective of reducing the time it takes to dispose of an opinion case from the 2001 level of 653 days to approximately 300 days commencing fully in September of 2004.

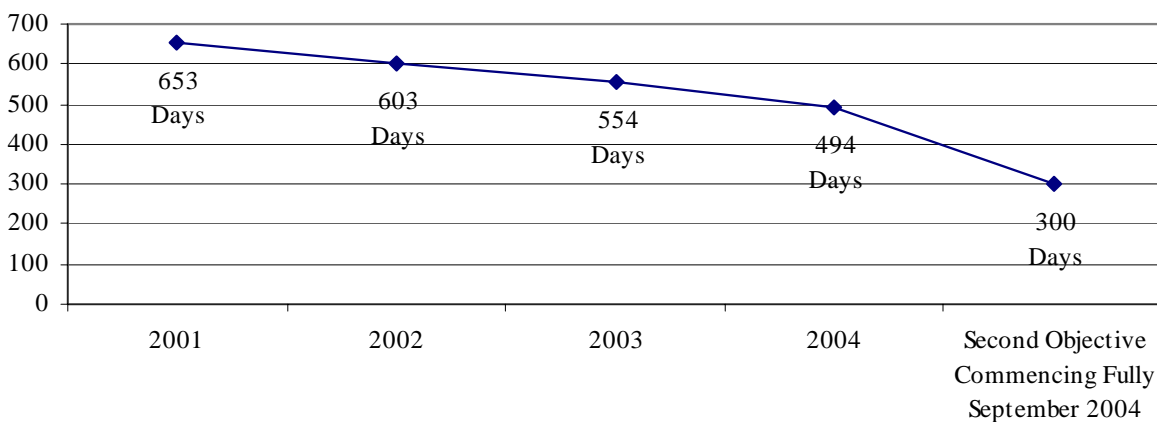
**Chart 8**  
**September 2004 Objective**

	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Improvement To Date</b>	<b>Second Objective</b>	<b>Improvement Needed To Meet Second Objective</b>
<b>Intake</b>	260	240	235	228	32	173	55
<b>Warehouse</b>	271	261	225	167	104	0	167
<b>Research</b>	61	62	64	68	(7)	61	7
<b>Judicial Chambers</b>	61	40	30	31	30	46	(15)
<b>Total</b>	653	603	554	494	159	280	214



Graph 10 illustrates the situation from a different perspective, showing the Court's starting point in 2001, the progress the Court made through 2002, 2003, 2004 and the second objective that was intended to commence fully in September of 2004.

**Graph 10**  
**Progress Toward Objectives**



2005 will be a critical year for delay reduction at the Court of Appeals. The Court's overall goal is to decide 95% of its cases within 18 months of filing. The Court estimates that its differentiated case management plan for appeals from the grant or denial of a summary disposition motion will cut the overall processing time for all opinion cases by 70 days on average in 2005. The Court's overall processing time for an opinion case was 489 days on average in the fourth quarter of 2004. Therefore, if the differentiated case management plan is successful in 2005, the average processing time for opinion cases will be 419 days, all other things being equal. The Court therefore must substantially reduce the wait in the Warehouse in 2005. As noted above, this will be a significant challenge for the Court as a whole.